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IN THE

Supreme Court of the United States

OCTOBER TERM—1946

No. 734

BAKER CASTOR OIL COMPANY,
Petitioner,

against

INSURANCE COMPANY OF NORTH AMERICA,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

D. ROGER ENGLAR,
MARTIN DETELS,
Counsel for Respondent.

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Neither in its petition or brief does the petitioner disclose to this Court what was actually decided by the courts below (*Baker Castor Oil Co.* v. *Insurance Co. of North America,* 60 F. Supp. 32, affd. 157 F. 2d 3). Fortunately, the opinions of these courts are brief and speak for themselves. What they decided was that the three ships carrying petitioner's cargo were not diverted from New York to New Orleans as the result of any Governmental restraint, or because of any enemy action, either actual or threatened, but were diverted pursuant to arrangements made between the governments of Brazil and the United States long prior to the events to which the petitioner attributes its loss.

In order to obtain certain priorities as to fuel and other facilities, the Brazilian Government, which owned a large number of vessels and operated them through a department known as the Lloyd Brasileiro, had agreed to route them in accordance with the instructions of the War Shipping Administration. Thereafter, and while these vessels were still in Brazilian waters, the Brazilian Government sought and obtained from the War Shipping Administration war

risk insurance on these vessels conditioned on their trading to ports in the Gulf of Mexico. The lower courts found that in these matters the Brazilian Government acted as a prudent shipowner and was not subject to any compulsion. That its operations were influenced by the existence of a state of war may be conceded, but it will scarcely be argued seriously that a policy of insurance against war risks covers all the economic consequences of a state of war.

In view of their decision, as above stated, the lower courts found it unnecessary to deal with the specific terms of the insurance contract. An examination of the policy, however, affords a complete answer to the petitioner's argument that respondent insured not only the cargo, but the voyage. The contract clearly provides that it does not insure the completion of the voyage, but only the safety of the cargo. In this connection we call attention to the following provisions of the policy (Plaintiff's Exhibit 5, R., p. 387):

The last sentence of paragraph numbered 1 (quoted in the opinions of the courts below, R., pp. 311 and 391);

Paragraph numbered 2;

The last sentence of paragraph numbered 4.

Some of the points which the petitioner argues in its brief may be very interesting and of general importance, but they have no relation to the facts in the present case.

CONCLUSION

The petition should be denied.

Respectfully submitted,

D. Roger Englar,
Martin Detels,
Counsel for Respondent.